

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:

**Fernando Kea and
Failya Miles-Kea,**

Bankruptcy Case No.: 10-80456

Soc. Sec. Nos. xxx-xx-1991 & xxx-xx-5156
Mailing Address: 3904 Ludgate Drive, , Durham,
NC 27713-

Debtors.

**Fernando Kea and
Failya Miles-Kea,**

A.P. No.: _____

Plaintiffs,

**Holder of the Note and
Charles A. Reinhardt, Jr., as Trustee for the
Deed of Trust**

Defendant.

VERIFIED COMPLAINT TO VALUE COLLATERAL

The Plaintiffs, above-named, respectfully allege as follows:

1. That this matter is a core proceeding pursuant to 28 U.S.C. § 157, and that the court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157 and 1334.
2. This Complaint was filed, pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c), and in accordance with Bankruptcy Rule 7001, to value their residence for the purpose of determining the secured status of the mortgage claim held by The Roberts Company.
3. The Plaintiffs are filed this bankruptcy case on March 15, 2010, seeking protection under Chapter 13 of Title 11 of the United States Code.
4. The Holder of the Note was, upon information and belief, at the time of recording of the Deed of Trust a corporation and/or a partnership with an office and principal place of business located at Post Office Box 2626, , Durham, NC 27715- .
5. Charles A. Reinhardt, Jr., is an individual and, upon information and belief, serves as the Trustee for the Deed of Trust, with his principal place of business located at Post Office Box 1452, Durham NC 27702.
6. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c).
7. The Plaintiffs own real property located at 3904 Ludgate Drive Durham, NC 27713. The legal description of the property is as follows:

LYING on the western side of Ludgate Drive, containing 14,476 square feet, more or less, and being all of Lot 17 of the FORESTWOOD II, Phase II Revised, as per plat and survey thereof now on file in Plat Book 133 at page 11, in the Office of the Register of Deed of Durham County, to which plat reference is hereby made for a more particular description of same. The tax map or parcel ID No. is: 146506

8. Citimortgage, Inc. holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$99,615.26. This Deed of Trust originally given to and held by Equity Services Inc. D.B.A. Affordable Funding. This Deed of Trust was recorded on January 12, 2001, in Book 2980 at Page 746, Durham County Registry of Deeds.
9. On October 7, 2008, the Plaintiffs granted a Deed of Trust with the Beneficiary listed as "Holder of the Note" on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$8,950.00. This Deed of Trust was recorded on October 23, 2008, in Book 6080 at Page 824, Durham County Registry of Deeds.
10. The fair market value of the said property is not greater than \$99,009.90.
11. Pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c) of the Bankruptcy Code and In re: Kidd, 161 B.R. 769 (Bankr. E.D.N.C. 1993), the second Deed of Trust against the Plaintiffs' said property, is an unsecured claim. In turn, pursuant to 11 U.S.C. § 506(d), the lien securing said loan is void.

WHEREFORE, the Plaintiffs pray the Court find that said second Deed of Trust upon said property, to be wholly unsecured, and that said claim should therefore be classified an unsecured claim for the purpose of this Chapter 13 case. The Plaintiffs further pray that the Court order Defendants to cancel the said Deed of Trust forthwith upon the completion of the Plaintiffs' Chapter 13 plan and the granting of the Plaintiffs' discharge, and that the Court grant such other and further relief as to the Court seems just and proper.

Dated: March 1, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz
Edward Boltz
Attorney for the Plaintiffs
North Carolina State Bar No.: 23003
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Raleigh, N.C. 27615
(919) 847-9750

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Plaintiffs,

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Deed of Trust**

Defendant.

VERIFICATION OF COMPLAINT TO VALUE COLLATERAL

We, Fernando Kea and Failya Miles-Kea, the Plaintiffs in the above captioned case, hereby state, under penalty of perjury, that, to the best of our knowledge, that:

1. Citimortgage, Inc. holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$99,615.26. This Deed of Trust originally given to and held by Equity Services Inc. D.B.A. Affordable Funding. This Deed of Trust was recorded on January 12, 2001, in Book 2980 at Page 746, Durham County Registry of Deeds.
2. A second Deed of Trust exists against such property, with a payoff balance, as of the date this case was filed in the amount of approximately \$8,950.00. This Deed of Trust was recorded on October 23, 2008, in Book 6080 at Page 824, Durham County Registry of Deeds.
3. The fair market value of the said property is not greater than \$99,009.90.

Dated: 2/18/2011

/s/Fernando Kea
Fernando Kea

Dated: 2/18/2011

/s/Failya Miles-Kea
Failya Miles-Kea

Sworn and subscribed before me on 2/18/2011_

Affix Seal or
Stamp

/s/Melissa E. Weaver

Melissa E. Weaver_

Signature of Notary Public

Commission expires: 4/30/2011